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SENATE

} REPORT  
} No. 1028

## STATUS OF RETIRED OFFICERS OF THE REGULAR ARMY DETAILED AS PROFESSORS, ETC.

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FEBRUARY 3 (calendar day, FEBRUARY 6), 1925.—Ordered to be printed

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Mr. BINGHAM, from the Committee on Military Affairs, submitted  
the following

### REPORT

[To accompany S. 2865]

The Committee on Military Affairs, to which was referred the bill (S. 2865) to define the status of retired officers of the Regular Army, who have been detailed as professors and assistant professors of military science and tactics at educational institutions, having considered the same, report thereon favorably with the recommendation that the bill do pass with amendments.

The purpose of the proposed bill is fully set forth in the report of the House Military Affairs Committee on a similar measure, and is therefore adopted by your committee and made a part of this report, as follows:

The purpose of this proposed legislation is to define the status of certain retired officers of the Regular Army and Philippine Scouts who at various times have been placed on active duty at educational institutions under the authority contained in sections 40b and 55c of the national defense act.

Section 40b of the national defense act, as amended on June 4, 1920, provides as follows:

"SEC. 40b. Personnel for duty with Reserve Officers' Training Corps: The President is hereby authorized to detail such numbers of officers, warrant officers, and enlisted men of the Regular Army, either active or retired, as may be necessary for duty as professors of military science and tactics, assistant professors of military science and tactics, and military instructors at educational institutions where one or more units of the Reserve Officers' Training Corps are maintained. In time of peace retired officers, retired warrant officers, or retired enlisted men shall not be detailed under the provisions of this section without their consent, and no officer on the active list shall be detailed for recruiting service or for duty at a school or college, not including schools of the service, where officers on the retired list can be secured who are competent for such duty. Hereafter retired officers below the grade of brigadier general and retired warrant officers and enlisted men shall, when on active duty, receive full pay and allowances."

Section 55c authorizes the Secretary of War to detail military personnel as instructors at other schools and colleges, and states:

"SEC. 55c. Military equipment and instructors at other schools and colleges: The Secretary of War is hereby authorized, under such regulations as he may prescribe to issue such arms, tentage, and equipment as he shall deem necessary for proper military training to schools and colleges, other than those provided for in section 40 of this act, having a course of military training prescribed by the Secretary of War and having not less than one hundred physically fit male students above the age of fourteen years; and the Secretary of War is hereby authorized to detail such available active or retired officers, warrant officers, and enlisted men of the Regular Army as he may deem necessary to said schools and colleges, other than those provided for in section 40 of this act: *Provided*, That while so detailed they shall receive active pay and allowances: *Provided further*, That in time of peace retired officers, warrant officers, or enlisted men shall not be detailed under the provisions of this section without their consent."

Particular attention is invited to the provisions in the above-quoted sections calling for active pay and allowances for such service.

The basic principle of the national defense act is a small enlisted standing Army, a comparatively large corps of Regular officers, and, in addition to the National Guard and Organized Reserves, a scheme of training in schools and colleges and summer training camps to be conducted by such Regular officers. During consideration of this principle your committee gave a great deal of attention to the matter of utilizing in some manner the services of those retired officers, qualified in all respects, to do the work and desirous of being detailed to some active duty. It was agreed that especially qualified officers and enlisted men would be able to render valuable service, and accordingly the provisions of sections 40b and 55c were adopted.

In this connection, it may be stated the members of your committee have never contemplated nor recognized any technical difference in the "active duty" which is performed by any officer, whether active or retired, as instructor at a school or college, from any other kind of "active duty," which an officer may be called upon to perform. In fact, your committee feels there is not a more important duty than that of instructor in our schools and colleges, where the officer comes in contact with the youth of the Nation, and undoubtedly, exerts a great influence in the molding of his character. This view also is held by the War Department. Hence, the decision of the Comptroller General setting up a special form of duty, semimilitary in character, as hereinafter set forth, is considered erroneous by your committee, and entirely without foundation in fact.

The promotion of officers after their retirement was authorized in section 127a of the national defense act, as amended on June 4, 1920, which authority existed up to the passage of the pay readjustment act of June 10, 1922. The Comptroller General on August 11, 1922 (2 Comp. Gen. 107), held that a retired officer detailed as professor of military science and tactics under section 40b, national defense act, does not while in the performance of such duty come within the purview of that part of section 127a, national defense act, providing that—

"Hereafter any retired officer who has been or shall be detailed on active duty shall receive the rank, pay, and allowances of the grade, not above that of colonel, that he would have attained in due course of promotion if he had remained on the active list for a period beyond the date of his retirement equal to the total amount of time during which he has been detailed to active duty since his retirement."

and is not possessed of any right thereunder to promotion pay or otherwise. The Comptroller General said, in part:

"A detail under this statute (40b) is a detail to a special form of duty, semimilitary in character, for which provision has been made for both detail and pay purposes separately and apart from 'active duty' proper or military duty generally, which latter duty is the duty covered by section 127a, national defense act."

Section 1: Since June 4, 1920, Philippine Scout officers have been carried on the promotion list with officers of the Regular Army. The department in its details under sections 40b and 55c of the national defense act has made no distinction between the Regular officer and the Philippine Scout officer, and your committee is of the opinion that for this class of work no distinction should be made. The only requisite for detail should be the officer's qualifications as an instructor, and the purpose of this section is to specifically authorize the War Department to utilize the services of any qualified retired Philippine Scout officer under the sections of the national defense act above quoted. All these Philippine Scout officers are American-born officers.

Section 2: Since the Comptroller General has stated that duty under section 40b, national defense act, is a special form of duty, semimilitary in character, any time which an officer may have spent in preparing himself on temporary duty by attendance on any course of preparatory instruction for such a detail is also called into question, and by this section the War Department desires to clear up any doubt which may exist with respect to it. It is believed by your committee that such an officer attending a course of instruction or any temporary duty preparatory to his entering upon the work of instructor at a Reserve Officers' Training Corps institution, or any other school or college, should be considered on active duty.

Section 3: The act of June 10, 1922, the pay readjustment act, provides base pay for officers of various classes and also provides that a 5 per cent increase shall be allowed in this base pay for each three years of active commissioned service. The purpose of section 3 is to enable those retired officers who may be performing the duties herein discussed credit for such active duty in computing their pay.

Section 4: Under the authority contained in section 127a, national defense act, above quoted, a number of officers were promoted by reason of active duty performed as instructors at schools and colleges provided for in sections 40b and 55c. The Comptroller General states that these promotions were illegally made and that the pay and allowances drawn by such officers are without authority because the kind of duty on which they were placed was not "active duty" proper or military duty generally. The purpose of this section is to declare that the duty performed as an instructor under sections 40b and 55c is active duty in all respects and constitutes sufficient authority for the promotions which have already been made and for the pay and allowances which may have been paid to such promoted officers. It should be noted that the promotion of any officer after he has retired is no longer authorized (sec. 17, act of June 10, 1922), but this section will entitle such an officer to his full active pay and allowances when he is placed on such duty. It should also be noted that in section 17 of the act of June 10, 1922, among other things, it was provided:

"That officers and former officers of the Philippine Scouts who were placed on the retired list prior to June 4, 1920, shall be entitled to promotion on the retired list for active duty heretofore performed subsequent to retirement in accordance with the provisions of section 127a of the act of June 3, 1916, as amended by the act of June 4, 1920, and to the same pay and benefits received by other officers of the Army of like grade and length of service on the retired list."

In accordance with the authority contained in the preceding quotation the War Department was preparing to promote eight Philippine Scout officers who had been placed on active duty prior to July 1, 1922, at schools and colleges, but about this time the Comptroller General rendered his decision (2 Comp. Gen. 107) above quoted, after which the department did not feel justified in making the promotions. This section will again authorize the department to make the promotions which the Congress has already indicated should be made and also promote Capt. C. E. Lauderdale, a Regular Army officer, who had been placed on similar duty.

Section 5: The purpose of section 5, in general terms, is to validate the promotions already made under section 127a and the active pay and allowances drawn by such promoted officers when on duty at schools and colleges.

The report of the Secretary of War is as follows:

WAR DEPARTMENT,  
Washington, D. C.

Hon. JOHN C. McKENZIE,

*Chairman Committee on Military Affairs,  
House of Representatives.*

MY DEAR MR. McKENZIE: With reference to your letter of the 5th instant, calling for report on H. R. 11284, I invite your attention to the fact that H. R. 11284 is identical in effect with S. 2865, Sixty-eighth Congress, first session, a report on which has been made by me to the chairman Committee on Military Affairs, United States Senate, a copy of which report I inclose.

Attention is invited to the fact that the act of June 10, 1922 (42 Stat. 632), provides, among other things:

"Active duty performed after June 30, 1922, by an officer on the retired list, or its equivalent, shall not entitle such officer to promotion."

It is believed that the passage of either H. R. 11284 or S. 2865 might give rise to the contention that the effect thereof is to modify the provision so as to permit promotion of officers on the retired list for duty of the character described in said bills performed after June 30, 1922.

For the above reason, as well as for the reasons given in my letter to the chairman Committee on Military Affairs, United States Senate, dated January 10, 1925, copy inclosed, I do not recommend the passage of either H. R. 11284 or S. 2865 in their present form, but do recommend for enactment the substitute submitted therefor in my letter to the chairman Committee on Military Affairs, United States Senate.

Sincerely yours,

JOHN W. WEEKS, *Secretary of War.*

WASHINGTON, D. C.

Hon. JOHN C. MCKENZIE,  
*Chairman Committee on Military Affairs,  
House of Representatives.*

MY DEAR MR. MCKENZIE: This is to acknowledge the receipt of your letter of the 5th instant, reference report on H. R. 11284.

H. R. 11284 is identical in effect with S. 2865, Sixty-eighth Congress, first session, a report on which has been made by me to the chairman Committee on Military Affairs, United States Senate, a copy of which report I inclose.

Sincerely yours,

*Secretary of War.*

JANUARY 10, 1925.

Hon. JAMES W. WADSWORTH,  
*Chairman Committee on Military Affairs,  
United States Senate.*

MY DEAR SENATOR WADSWORTH: In compliance with your request of April 4, 1924, report is made upon S. 2865, a bill to define the status of retired officers of the Regular Army who have been detailed as professors and assistant professors of military science and tactics at educational institutions.

In a decision of August 11, 1922, in the case of Capt. Clarence E. Lauderdale, United States Army, retired, which decision was reaffirmed on November 29, 1922, the Comptroller General ruled that the duty performed by retired officers of the Regular Army under section 40b of the national defense act, as amended, as professors and assistant professors of military science and tactics at educational institutions is a special form of duty, semimilitary in character, for which provision has been made for both detail and pay purposes separately and apart from active duty proper or military duty generally.

The War Department is of the opinion not only that duty as professor or assistant professor of military science and tactics or as military instructor at an educational institution is active duty and military duty in every sense of the terms, but also that this particular duty is among the most important duties performed by officers in carrying out the present military policy of the United States.

S. 2865 as drawn will, if enacted into law, define the status of retired officers properly assigned as professors and assistant professors of military science and tactics at educational institutions, and to that extent the bill meets with the approval of the War Department.

There is, however, another category of retired officers not provided for by the bill—those retired officers referred to in the same section (40b) of the national defense act, as amended, as "military instructors" at educational institutions and those referred to in section 55c of the same act, whom the Secretary of War is authorized to detail to certain schools and colleges. In order that the retired officers of the Regular Army who fall in this category may be included in the provisions of the bill, it is suggested that the bill (S. 2865) be redrafted for this purpose.

Your committee has also added to section 5 of the bill as amended language which will validate the services of several retired officers who were detailed to active duty under section 1225 of the Revised Statutes. The insertion of this language is recommended by the War Department:

As the evident intent of Congress, as interpreted by the War Department prior to the decision of the Comptroller General, was frustrated thereby, it is thought that the remedial legislation should not only confirm the active-pay status of



retired officers who are now or hereafter may be on such active duty, but also establish without doubt their status at the date of the comptroller's decision; this has been included in the redraft herewith.

Furthermore, as a consequence of decision of the Comptroller General, retired officers on active duty as professors of military science and tactics are denied the credit for such service in computing longevity pay as obviously contemplated in the act of May 12, 1917. A provision has been incorporated in the redraft herewith for the relief of such officers from said decisions.

Likewise, as a result of the decision of the Comptroller General, dated August 11, 1922, and confirmed November 29, 1922, retired officers detailed to active duty at educational institutions are denied such active status while undergoing instruction preparatory to entering upon such duties, which instruction has for its purpose the proper coordination of the instruction of students with the War Department policies in training young men of the country for national defense. This phase of the subject is covered in the recommended redraft of Senate bill 2865, given below.

Inasmuch as Congress in section 17 of the act of June 10, 1922, specifically mentioned retired officers of the Philippine Scouts in connection with their status on active duty, it seems wise to take advantage of this opportunity of definitely establishing their relations in this connection; this has also been done in the redraft which follows:

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The War Department recommends the enactment into law of S. 2865 as modified above and with appropriate changes in the title of the bill.

This proposed legislation has been submitted to the Director of the Bureau of the Budget, as required by Circular No. 49 of that bureau, who advises that the same is not in conflict with the financial program of the President.

Sincerely yours,

JOHN W. WEEKS, *Secretary of War.*

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